

California Victim Compensation and Government Claims Board
Open Meeting Minutes
June 16, 2011, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Leslie Lopez, Deputy Secretary and General Counsel, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, June 16, 2011, at 10:01 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller. Board member Michael Ramos, San Bernardino County District Attorney, was absent.

Board staff present included Julie Nauman, Executive Officer; Patty Harris, Chief Deputy Executive Officer; and Wayne Strumpf, Chief Counsel. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the May 19, 2011, Board Meeting

Chairperson Lopez stated that she was not present at the May 19, 2011, Board meeting; however, she stated that she had an opportunity to review the minutes.

The Board voted to approve the minutes of the May 19, 2011, meeting.

Item 2. Public Comment

Michael Siegel, attorney, provided the following comments on behalf of a Department of Children and Family Services social worker:

- Social workers who file applications for county dependents do not wish to provide their personal information such as social security numbers or birthdate to confirm their identity.
- Protecting the victim's privacy, in turn, invades the privacy of social workers.
- Social workers suggest allowing other means to verify their identity such as providing their county ID number or, in the alternative, social workers could provide a pseudo name or number as an identifier.

Executive Officer Nauman thanked Mr. Siegel for his comments. Ms. Nauman stated that staff is currently addressing this issue and that she would become personally involved to ensure that the matter gets resolved satisfactorily.

Chairperson Lopez directed staff to seek alternatives to social workers providing their personal information and report its actions at the August 18, 2011, meeting.

Item 3. Executive Officer's Statement

CalVCP CaRES Modification Project

The purpose of the CaRES Modification Project, which began in July 2010, was to modify the existing CaRES database architecture and application in order to address and resolve architectural issues. The project objective seeks to provide a fully functional and documented database and application architecture that has the capability of expansion for future functionality. Achieving this objective will result in improved system stability, information reliability, and flexibility to allow for future changes and enhancements as needed after project completion.

Executive Officer Nauman announced that CalVCP reached a milestone this week regarding the CaRES modification project. The first phase, which consisted of discovery, validation, and documentation, resulted in a recommendation on how the CalVCP would be able to technically resolve the underlying architectural issues with the CaRES system. The Executive and Steering Committees approved the recommendation earlier in the week. Executive Officer Nauman stated that she was excited about the significant milestone because efforts are being made to ensure that CalVCP is getting the maximum performance from CaRES.

The first increment will kick off in August 2011 and should be completed in late 2012. The third and final increment should be completed in December 2013. Ms. Nauman stated that the reason the project is being completed incrementally is so that staff can benefit from the improvements that will be made with each of the increments.

Take Our Daughters and Sons to Work Day

On June 8th the VCGCB participated in the annual Take Our Daughters and Sons to Work Day. This year's theme, Invent the Future, was a great opportunity for staff to talk to the children about the importance of education and the role it plays in helping prepare for the future and achieving goals. Executive Officer Nauman reported that she had the pleasure of meeting with 35 children with varied career choices including basketball players, NASCAR drivers, veterinarians, soccer players, singers, doctors, lawyers, and teachers, among others. She stated that the day was filled with a variety of enriching activities that encouraged children to think about how they envision the future and how they can make their vision a reality. Ms. Nauman thanked the planning committee and volunteers for all of their hard work.

Item 4. Contract Report

Cyber-Pro Systems Inc. dba Medical Data Exchange-Fiscal Intermediary Services (MDX) - Amdt. 2

Cyber-Pro provides bill review and adjustment services in accordance with the Medicare and DentiCal Fee Schedule and applies other fee schedules as required by the Board. Cyber-Pro audits and reviews all bills and provides the Board with a batch summary report and monthly report. In addition, Cyber-Pro answers questions and resolves technical disputes raised by providers, victims, and VCP staff. The Board approved the three-year contract in the amount of \$1,530,542.00.

California Technology Agency – Amdt. 1

CalSTARS provides the VCGCB with electronic data processing services that are required to account for departmental programs. The Board approved the two-year contract in the amount of \$52,000.00.

California Technology Agency – Amdt. 2

Under the ongoing mandatory contract, the California Technology Agency provides information technology services, materials, and/or equipment. The Board approved the three-year contract in the amount of \$1,095,000.00.

Celer Systems, Inc. – Amdt. 1

Under a master agreement, Celer Systems, Inc. (Celer) provides the necessary IT Application Development resources needed to maintain and support CaRES. The scope of work includes ensuring that daily, monthly, and weekly reports are produced and electronically distributed on time including the production of ad-hoc reports necessary to support the Program. Additionally Celer worked on the programming in CaRES to support the rate and other changes approved by the Board at the February 17, 2011, meeting. The Board approved the extension to a one-year contract in the amount of \$116,100.00.

Informatix, Inc. – Amdt. 1

Under the CMAS agreement, Informatix, Inc., provides technical expertise and dedicated network support services to the VCGCB infrastructure. Work includes daily maintenance and support of network hardware and software, troubleshooting reported problems, supporting requests for network access, and managing network usage. Additionally, the contractor assists in implementing network and system security processes and privileges. The Board approved the extension to a 10-month contract in the amount of \$83,592.00.

Government Claims Program (GCP) Feasibility Study Report to Replace the Government Claims Automated Tracking System (GCATS)

The VCGCB sought offers from qualified vendors to provide consulting services to assist in the development of a Feasibility Study Report (FSR) involving the design of a new system for the Government Claims Program (GCP). The new system will replace the current Government Claims Automated Tracking System (GCATS). The successful vendor will conduct a feasibility study, including gathering business and technical requirements and conducting market research. The vendor will then write an FSR to document the feasibility study in accordance with DGS Statewide Administrative Manual, Section 4800 and California Technology Agency SIMM Section 20.

California Technology Agency approved a budget of \$150,000.00 for this effort on March 23, 2011. The Request for Offer was released on May 2, 2011; an Addendum to the RFO was released May 11, 2011; and offers were due on May 27, 2011. The VCGCB received four bids, the contractors gave presentations, and the evaluation process was completed.

Executive Officer Nauman recommended that the Board approve Continuity Consulting, Inc., the successful bidder, to perform the work.

The Board voted to approve the contract with Continuity Consulting, Inc., in the amount of \$112,375.00.

Item 5. Legislative Update

Neil Ennes, Manager, Legislation and Public Affairs Division, reported the following:

- SB 207 (Kehoe), the Board's first Government Claims Bill of 2011, appropriates \$557,729.29 to pay claims approved by the Board from June 2010 through November 2010. The bill moved to the second house.
- SB 139 (Fuentes), the Board's second Government Claims Bill of 2011, appropriates \$83,996.50 to pay claims approved by the Board from December 2010 through May 2011. It also appropriates \$162,700 to pay the erroneous conviction claim of Robert Cuevas. The bill moved to the second house.
- AB 898 (Alejo), the bill relating to restitution fines, increases the minimum amounts for restitution fines imposed on convicted defendants from \$200 to \$300 for felonies and from \$100 to 200 for misdemeanors.

Item 6. Consideration of Organizational Applications for the 2011 California State Employees' Charitable Campaign

Each year the Victim Compensation and Government Claims Board (VCGCB) certifies the eligibility of charitable, non-profit organizations to receive contributions through the annual California State Employees' Charitable Campaign (Campaign) and selects organizations to manage the Campaign in various regions throughout the state. Three types of organizations participate in the Campaign: Principal Combined Fund Drive (PCFD) agencies, PCFD-affiliated (affiliated) member organizations, and non-PCFD-affiliated (non-affiliated) organizations. PCFD agencies are responsible for publishing and distributing Campaign brochures and pledge forms and are also responsible for transmitting contributions to designated charities.

The Board voted to approve the following applications to participate in the 2011 California State Employees' Charitable Campaign: 36 PCFD agencies; 1,413 PCFD-affiliated organizations; and 1,555 non-affiliated organizations.

Item 7. Consent Agenda (Nos. 1- 343)

The Board voted to adopt the staff recommendations for item numbers 1-343, as amended, as follows: item numbers 65, 66, and 120 were removed to allow the claimants an opportunity to address the Board; item number 111 was withdrawn by the claimant; and item numbers 118 and 127 were removed pending further review of additional information submitted.

Consent Agenda Appearance

Item 65, Claim Number G594276

Karen Aumond, claimant, appeared and provided the Board with documents in support of her claim. Arwen Flint appeared on behalf of the Department of Justice.

Karen Aumond requested payment from the Department of Justice in the amount of \$2,982.00 to reimburse her for excess dental contributions paid from September 1, 2004, through May 1, 2010.

The Department of Justice (DOJ), Department of Personnel Administration (DPA), and Government Claims Program staff recommended that the claim be partially allowed in the amount of \$664.04 which equated to the employee's 25% share of the dental premiums.

Jackie Tinetti, Manager, Government Claims Program, stated that the amount recommended by staff represents payment of 25% of the total premium paid which is the employees' liability share of the dental premium. She further stated that the remaining 75% is paid by the employer, which, pursuant to DPA rules, policies, and regulations, employees have no right to refund of those monies.

Chairperson Lopez asked Ms. Flint whether \$2,982.00 or \$664.04 was taken out of Ms. Aumond's check for the dental premium.

Ms. Flint stated that under Consolidated Benefits (CoBen), excluded employees, and some rank and file employees, receive an allotment that is applied towards health, dental, and vision benefits. She stated that the amount Ms. Aumond stated that was taken out of her check is correct. She stated that she was not aware of the 25% employee liability until DPA informed her that employees are not able to recoup what would appear to be the full amount that was deducted from their check. She stated that she received written correspondence from DPA stating that there is no difference, in terms of the 25% employee liability, as it pertains to rank and file or excluded employees. She further stated that DOJ followed DPA's direction in recommending that the claim be partially allowed in the amount of \$664.04.

Ms. Aumond directed the Board's attention to her exhibit entitled Dental Open Enrollment – State-Sponsored Dental Plan Premiums. She stated that she was enrolled in the Delta Dental Premier Enhanced Plan for excluded employees, which does not include an employer share. She received the CoBen allowance for an employee with one dependent, her son. When her son turned 23, she submitted a form to PERS declining coverage for her son because benefits are not available to an employee's child once they attain the age of 23. She further stated that the change was not made and she continued to pay a higher premium for 70 months resulting in an overpayment in the amount of \$2,815.22.

Ms. Flint stated that DPA published a chart depicting the dental premiums for rank and file and excluded employees that indicates that there is a 25% employee share. She further stated that she spoke with DPA regarding the chart and they confirmed that DOJ could refund Ms. Aumond \$664.04, which equates to the employee's 25% share of the dental premiums.

Board member Chivaro stated that he was not clear whether the amount awarded should be the staff recommendation of \$664.04 or \$2,815.22, which represented the amount requested by the claimant.

Ms. Tinetti stated that the staff recommendation to partially allow the claim in the amount of \$664.04 is based on DPA policy, rules, and regulations and is consistent with prior staff recommendations on similar claims. She further stated that if the Board allowed the claim in the amount recommended by staff, the claimant would be free to reject the award and pursue her claim further in small claims court.

Chairperson Lopez stated that the option to pursue the matter in small claims court is not efficient. She further stated that there is a lack of clarity in DPA's rules.

The Board voted to allow the claim in the amount of \$2,815.22 which represented the amount requested by the claimant.

Consent Agenda Appearance
Item 66, Claim Number G594861

Beverly Falk, claimant, did not appear; however, in lieu of her appearance, she faxed a letter in support of her claim for the Board's consideration. Arwen Flint appeared on behalf of the Department of Justice and Bryan Bruno appeared on behalf of the Department of Personnel Administration.

Ms. Falk requested payment from the Department of Justice in the amount of \$2,872.35 to reimburse her for excess dental contributions paid from November 1, 2006, through January 1, 2011.

The Department of Justice (DOJ), Department of Personnel Administration (DPA), and Government Claims Program staff recommended that the claim be partially allowed in the amount of \$712.05 which equated to the employee's 25% share of the dental premiums.

Chairperson Lopez stated that she had the same concern with this claim regarding excess dental contributions paid by an employee that she had with the previous claim that the Board approved in the full amount requested by the claimant. She stated that DPA's rules and the information given to the employee on their warrant and benefit information are not clear. She added that in this case the staff recommendation of \$712.05 represents the employee's 25% contribution rate for a period of 50 months; however, the claimant states that \$2,872.35 was deducted from her check.

Ms. Flint stated that there is more clarity regarding the 25% employee liability for rank and file employees. She stated that DPA's chart relating to Delta Premier includes an asterisk that denotes the 25% employee share, which is the only place that an employee would become aware of that share. She further stated that warrants are issued through the State Controller's Office, not the Department of Personnel Administration, therefore the State Controller's Office controls how the information is displayed.

Mr. Bruno commented that when the CoBen allowance is computed by DPA, it is based on 100% of the vision premium contribution and 75% of the delta premier rate. He stated that regardless of the dental plan that an employee is enrolled, the employee will receive a 75% employer share that is built in. He stated that an employee will receive a computed weighted average for health insurance. He stated that the only difference with CoBen versus what rank and file employees notice who do not have Coben is that it is in one amount. He stated that if an employee's premium is less than the CoBen allowance, the employee would receive the difference as taxable cash in their paycheck. If

the total cost of the plan is more than the CoBen allowance, that amount is offset and the remainder comes as a pretax deduction out of an employee's warrant. He stated that both scenarios apply to excluded and rank and file employees who have accepted the CoBen contribution in their Memorandum of Understanding.

Mr. Bruno stated that Ms. Falk's bargaining unit accepted the computations, the amount, and how it is applied by the State Controller's Office. He stated that he realized that the Board acted on the previous claim which was very similar to this claim, but the same application applies to excluded employees. Mr. Bruno stated that with regard DPA's rate chart referred to previously, it accurately reflects the components that he mentioned and the State Controller's Office computes it the same way. He stated that whether the dollar amount is broken out or separated, the State Controller's Office will always bundle them together.

Chairperson Lopez asked Mr. Bruno to clarify whether a portion of the \$2,872.35 that was taken out of Ms. Falk's check was applied towards other benefits besides dental.

Mr. Bruno stated that the one-lump sum applies to an offset against vision, dental, and health benefits. He further stated that an employee must look at it as a whole dollar amount against the total premium, even though it is computed separately by the DPA.

The Board voted to adopt the staff recommendation to partially allow the claim in the amount of \$712.05.

Consent Agenda Appearance **Item 120, Claim Number G595405**

Lee Ladisky, claimant, participated in the Board meeting via teleconference.

Mr. Ladisky requested payment in the amount of \$8,219.00 for loss of personal property resulting from his vehicle being hit with debris on Highway 101 in the City of San Rafael and the County of Marin on December 1, 2010.

Mr. Ladisky stated that Caltrans had prior knowledge of the highway defect because he notified them on three separate occasions through their website. He stated that the damage to his vehicle resulted in 67 days of repairs while waiting for various parts. He further stated that the original cost for the damage to his vehicle was over \$13,000; however, he opted to pay for part of the damage himself.

The Board voted to adopt the staff recommendation to reject the claim.

Item 8. Mid Valley Towing **Claim Number G591660**

Mid Valley Towing requested payment in the amount of \$54,767.29 for unpaid invoices for services rendered to the California Highway Patrol from October 2009 through September 2010.

The Board voted to allow the claim in the amount of \$54,767.29, under authority of Government Code section 965 (agency pay).

Item 9. Claim of Richard Camacho
Claim Number G596628

Richard Camacho requested payment in the amount of \$208,246.77 for services provided to the California Highway Patrol. An out-of-court settlement was negotiated between the CHP's Office of Legal Affairs and the claimant.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$208,246.77, under authority of Government Code section 965 (agency pay).

Item 10. Claim of Los Angeles Harbor College
Claim Number G594393

Los Angeles Harbor College requested payment from the Chancellor's Office of the California Community Colleges in the amount of \$128,000.00 for unpaid grant moneys under Grant Agreement number 06-332-008.

The Board voted to allow the claim in the amount \$128,000.00, under authority of Government Code section 905.2 (b)(4) (legislative pay).

Item 11. Claim of Sonoma County Junior College District
Claim Number G594431

Sonoma County Junior College District requested payment in the amount of \$52,500.00 for services provided under Grant Number 07-095-002 with the California Community College Chancellor's Office.

The Board voted to allow the claim in the amount \$52,500.00, under authority of Government Code section 965 (agency pay).

Item 12. Claim of Mt. San Antonio College
Claim Number G594980

Mt. San Antonio College requested payment in the amount of \$80,000.00 from the Chancellor's Office of the California Community Colleges for the unpaid balance of Grant Agreement number 07-305-016.

The Board voted to allow the claim in the amount of \$80,000.00, under authority of Government Code section 905.2(b)(4) (legislative pay).

Items 13-15. Government Claims Filed by the Los Angeles Community College District
Against the Chancellor's Office of the California Community Colleges

Laurelyn Johnson provided the Board with documents in support of the claims by the Los Angeles Community College District, Item Numbers 13-15, claim numbers G596722, G596723, and G596724, respectively.

The claims represented outstanding balances owed for activities and costs incurred in accordance with the provisions of the sections 81800-81839 of the Education Code, as it related to the Community College Capital Outlay Program.

The Chancellor's Office of the California Community Colleges recommended that all three claims be allowed under authority of Government Code section 905.2(b)(4) (legislative pay) as follows:

claim number G596722 in the amount of \$171,000; claim number G596723 in the amount of \$2,410,538.19; and claim number G596724 in the amount of \$200,171.25.

The Board voted to adopt the staff recommendations to allow the claims in the amounts requested, under authority of Government Code section 905.2(b)(4) (legislative pay).

Item 16. Claim of Navigant Consulting, Inc.
Claim Number G594604

Navigant Consulting, Inc., requested payment in the amount of \$197,650.90 for consulting services provided to the California Department of Water Resources from July 1, 2010, through August 30, 2010.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$197,650.90, under authority of Government Code section 965 (agency pay).

Item 17. Claim of Electric Power Group LLC
Claim Number G594636

Electric Power Group LLC requested payment in the amount of \$122,184.64 for consulting services provided to the California Department of Water Resources from July 1, 2010, through August 28, 2010.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$122,184.64, under authority of Government Code section 965 (agency pay).

Item 18. Claim of Montague DeRose and Associates, LLC
Claim Number G595006

Montague DeRose and Associates, LLC requested payment in the amount of \$198,915.72 for financial advisory services provided to the California Department of Water Resources from July 1, 2010, through August 29, 2010.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$198,915.72, under authority of Government Code section 965 (agency pay).

Item 19. Claim of K & L Gates LLP
Claim Number G595512

K & L Gates LLP requested payment in the amount of \$105,452.40 for professional services provided to the California Department of Water Resources.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$105,452.40, under authority of Government Code section 965 (agency pay).

Item 20. Claim of L K Transportation, Inc.
Claim Number G595425

Judy Webber appeared on behalf of L K Transportation, Inc. There was no appearance by the California Department of Corrections and Rehabilitation.

LK Transportation, Inc., requested payment in the amount of \$53,906.75 plus small business penalties for transportation services provided to the California Department of Corrections and Rehabilitation from June 24, 2010, through November 17, 2010.

Chairperson Lopez asked Jackie Tinetti, Manager, Government Claims Program, if the amount requested by the claimant included state penalties for late payments. Ms. Tinetti stated, as a practical matter, the penalties cannot be computed as part of the claims review and approval process. She stated that once a claim is allowed and if prompt payment penalties apply, those computations are completed by the paying agency when they prepare the schedule and submit it to the State Controller's Office. She also commented that the State Controller's Office audits the claim, and, if there are no issues, the amount is paid.

Ms. Webber stated that she wanted to ensure that the small business penalties were paid. She said that she was told that she had to supply all of the computations for the small business penalties; however, the agency computes that amount after the approval to pay.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$53,906.75 under authority of Government Code section 965 (agency pay).

Item 21. Claim of Downey Brand Attorneys LLP
Claim Number G596210

Downey Brand Attorneys LLP requested payment in the amount of \$322,573.33 for legal services provided to the California Department of Corrections and Rehabilitation from February 16, 2010, through July 24, 2010.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$322,573.33 under authority of Government Code section 965 (agency pay).

Item 22. Claim of Joni Furuoka
Claim Number G594780

Joni Furuoka requested payment from the Department of General Services (DGS) in the amount of \$850.00 for the alleged damages to her vehicle that occurred as she entered the state parking garage.

Jackie Tinetti, Manager, Government Claims Program, stated that DGS recommended that the claim be partially allowed in the amount of \$425.00; however, DGS had not provided a detailed basis for its determination of the partial allow amount except to state that the amount represents half of the amount requested by the claimant plus refund of the \$25.00 filing fee. Ms. Tinetti reported that the claimant enclosed a detailed estimate of cost to repair the damages, which appeared to be reasonable. The cause of the damage is not in dispute and the Board had allowed a prior claim in full under the same set of circumstances.

The Board voted to adopt the staff recommendation to allow the claim in full in the amount of \$850.00, under authority of Government Code section 965 (agency pay).

Item 23. Claim of Regents of the University of California Berkeley
Claim Number G595126

The Regents of the University of California Berkeley requested payment from the California Department of Transportation in the amount of \$103,383.60 for an outstanding balance owed for activities and costs incurred in accordance with the provisions of Master Agreement 65A0212, Task

Order 1009, as it relates to a project entitled "Travel Times on Changeable Message Signs in Districts 4 and 3."

Jackie Tinetti, Manager, Government Claims Program, stated that CalTrans had not provided a recommendation regarding this claim; however, direct communication from CalTrans claims representatives indicated that the claim should be paid.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$103,383.60 under authority of Government Code section 965 (agency pay).

Item 24. Claim of Occidental Petroleum Corporation
Claim Number G595306

Occidental Petroleum Corporation requested re-issuance of a warrant for a corporate tax refund in the amount of \$88,646.83. The warrant was originally issued on July 25, 2006, from the tax refund account.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$88,646.83, under authority of Government Code section 965 (agency pay).

Item 25. Request for Delegation of Authority Under Government Code Section 935.6 by the Department of General Services

The Board voted to allow the request by the Department of General Services to settle and pay or reject claims that do not exceed \$1,000 each from July 1, 2011, through June 30, 2012.

Item 26. Bid Protest of Sirius Computer Solutions
Request for Proposal No. FTB 1011-C1000096

Byran Kimura appeared on behalf of the Department of General Services (DGS). There were no appearances on behalf of Sirius Computer Solutions (Sirius).

Wayne Strumpfer, Chief Counsel, explained that the bid protest by Sirius of the notice of intent to award the contract for California Franchise Tax Board Request for Proposal Number 1011-C1000096 (RFP), was for the Enterprise Tape Library Replacement Project.

The RFP was issued by the California Franchise Tax Board (FTB) under Public Contract Code section 12100 et seq. FTB received two bids, one from Sirius and another from Alliance Technology Group (Alliance). FTB rejected the Sirius bid for failing to comply with the RFP because it contained conditions or alterations and failed to meet all the technical requirements of the RFP. FTB issued a notice of intent to award the bid to Alliance, whose bid was found to be compliant with the RFP. On May 17, 2011, Sirius protested the intended award.

To successfully protest a solicitation issued under Public Contract Code section 12102, a protestant must submit in a Detailed Statement of Protest legal argument and factual evidence sufficient to show by a preponderance of the evidence that the protestant's proposal should have been selected in accordance with the selection criteria in the solicitation document.

Mr. Strumpfer stated that the hearing officer found that Sirius did not submit a separate Detailed Statement of Protest but instead chose to rely on its letter of May 17, 2011. This letter only alleged why Alliance's bid did not comply with the RFP; it did not state why the Sirius bid should not have been rejected. Because Sirius failed to allege or prove why its bid should have been selected in accordance with the selection criteria in the RFP, the Board should dismiss the protest.

because the Detailed Statement of Protest (the letter of May 17, 2011) failed to state a basis upon which the protest may be upheld.

The Board voted to adopt the hearing officer's decision to dismiss the protest filed by Sirius Computer Solutions on the grounds that the letter relied upon by Sirius as its Detailed Statement of Protest failed to state a basis upon which the protest may be upheld.

Item 27. Bid Protest of Universal Radiographics, Inc.
Request for Quotation No. 11-020-ITS

Bryan Kimura appeared on behalf of the Department of General Services. Jennifer Dauer, attorney, Diepenbrock Elkin, appeared on behalf of Universal Radiographics, Inc.

Wayne Strumpf, Chief Counsel, explained that the protest by Universal Radiographics, Inc. (Universal), of the notice of intent to award the contract for California Department of Corrections and Rehabilitation (CDCR), California Prison Health Care Services, Request for Quotation No. 11-020-ITS, was for hardware, software, and services for procurement of Digital Radiography Systems for North Kern State Prison and Wasco State Prison.

The Request for Quotation (RFQ) was issued by CDCR on March 30, 2011. CDCR received nine bids, including one from Universal. CDCR rejected the Universal bid as being nonresponsive to the RFQ because it failed to provide a response to each good and service listed in the Statement of Work; specifically, the bid only provided responses to the goods, but did not provide a response to any of the service or installation requirements of the Statement of Work. CDCR issued a notice of intent to award the bid to GE Healthcare. On May 21, 2011, Universal submitted a letter protesting the intended award, asserting that its bid price was the lowest one offered and the system and detectors offered in its bid were the same products offered by GE Healthcare with simply a different name attached.

To successfully protest a solicitation issued under Public Contract Code section 12102, a protestant must submit in a Detailed Statement of Protest legal argument and factual evidence sufficient to show by a preponderance of the evidence that the protestant's proposal should have been selected in accordance with the selection criteria in the solicitation document.

Mr. Strumpf stated that the hearing officer found that Universal failed to allege or prove why its bid should have been selected in accordance with the selection criteria in the RFQ. CDCR found that the Universal bid did not comply with the RFQ because the bid only provided responses to the goods requirements but did not provide a response to any of the RFQ service or installation requirements in the Statement of Work. Universal did not address this basis for rejection of its bid in its Detailed Statement of Protest.

Ms. Dauer responded that she was appearing, in part, to exhaust all administrative remedies. The purpose of the public bidding laws in the State of California is to avoid the appearance of favoritism, fraud, and corruption in the award of public contracting, pursuant to Public Contract Code section 100. She added that she has practiced public contract law for nearly 15 years and this bid is one of the most egregious attempted awards that is contrary to the terms of the solicitation document.

Ms. Dauer stated that the bid is an egregious attempted award in two ways: (1) Ms. Dauer quoted the following from the solicitation document "by submitting a quote, bidder agrees to the terms and conditions stated in this Request for Quotation and further that bid responses that reference a suppliers own terms and conditions or provisions will be considered nonresponsive and will be

rejected.” She stated that notwithstanding that very clear statement, GE Healthcare, the intended awardee, stated that “they had reviewed the terms and conditions included within this request for bid and takes general exception to the application of such terms and conditions. If awarded the bid, however, the parties agree to work in good faith to negotiate mutually acceptable terms and conditions.” Ms. Dauer stated that GE Healthcare absolutely cannot be awarded a valid contract because they have not bid or agreed to the terms that were required. (2) The second issue relates to the price of their bid. The State is purporting to award the bid at a modified cost. The bid price was modified to \$677,859.00, which was reached by taking the quote of the bidder, GE Healthcare, and a line item quote for Digital Radiography Systems service and support, specifically a five-year service agreement. The bid price for the five-year service agreement was just over \$14,000. She stated that staff apparently reached the purported prices by multiplying the cost by five, which represented the five-year service agreement, on the quotes for North Kern State Prison and Wasco State Prison. She stated that staff sustainably changed the bid, which cannot be done after the bids are in.

She stated that for the two reasons noted, the bid of GE Healthcare is materially nonresponsive and unavailable for award. Ms. Dauer stated that her office attempted to resolve the matter by suggesting that the appropriate course of action to take would be to reject all bids and rebid to allow correction; however, she was unsuccessful in reaching the appropriate person therefore the protest is being brought before the Board as part of the administrative remedies.

Chairperson Lopez asked Mr. Kimura to comment on the assertion by Ms. Dauer that GE Healthcare changed the terms and conditions of the RFQ.

Mr. Kimura stated that Universal Radiographics, Inc. failed to prove that they were a responsive bidder in their Detailed Statement of Protest. He further stated that GE Healthcare suggested changing the terms; however, that did not mean that DGS accepted those terms.

The Board voted to adopt the hearing officer’s recommendation to dismiss the protest on the grounds that the Detailed Statement of Protest submitted by Universal Radiographics, Inc., failed to state a basis upon which the protest may be upheld.

Item 28. Karyl Clarke (Pen. Code, § 4900 et seq.)
Claim Number G580449

Wayne Strumpfer, Chief Counsel, stated that Mr. Clarke requested that his claim be continued to the August 18, 2011 meeting. The Attorney General’s Office has been made aware of his request and are in agreement with the continuance.

The Board voted to continue the claim to the August 18, 2011, meeting.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:07 a.m.

Request for Approval to Submit the CalVCP Rulemaking Record to the Office of Administrative Law (Title 2, § 649.21)

Wayne Strumpfer, Chief Counsel, reported that proposed regulation section 649.21, Verification of Attorney’s Fees, would implement the attorney fee statute by providing for verification of attorney’s fees through fee statements documenting that attorney services were actually rendered to the applicant prior to receiving payment from the Board for those services. The proposed regulation would also ensure that the applicant is aware of the attorney’s representation and consents to that

representation. The Board continued the consideration of this item at its May 19, 2011, meeting because Board member Ramos was not going to be at the meeting and wanted to be involved in the discussion. Mr. Strumpfer added that upon further review and discussion with Secretary and Board Chairperson Anna Caballero, staff would thoroughly analyze the regulation to ensure that it is more specific to avoid any ambiguity.

Mr. Strumpfer recommended that the Board continue the item to a future Board meeting to accommodate Board member Ramos' request and to allow staff sufficient time to review the regulation.

The Board voted to continue the item to a future Board meeting.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer and Chief Counsel at 11:07 a.m. to deliberate on the proposed decisions, numbers 1 through 113.

Open Session

The Board reconvened into open session at 11:11 a.m. The Board voted to adopt the proposed decisions for numbers 1-113, with the exception of number 91, A10-2437382, which was removed because it was inadvertently listed twice on the agenda.

Adjournment

The Board meeting adjourned at 11:12 a.m.